

AUTUMN STATEMENT: ENHANCED CAPITAL ALLOWANCES

Notes on draft legislation

1. These notes outline the main features of the draft legislation. They follow the general chronology of the draft but do not attempt to cover every situation.

20% initial allowance for industrial buildings and structures

Clause A(1): main provision: new section 2A CAA 1990

2. Clause A(1) inserts a new section 2A into the Capital Allowances Act 1990 (CAA 1990). It provides for a 20% initial allowance for expenditure incurred on constructing industrial buildings or structures.

Section 2A(1): application of section 1 CAA 1990

3. Section 2A(1) applies the existing initial allowance provisions in section 1 CAA 1990 with appropriate modifications so that the 20% initial allowance is available for capital expenditure on the construction of industrial buildings or structures, including "qualifying hotels", but it is not available for other commercial buildings and structures.

Section 2A(2): the building etc must be in use by the end of 1994

4. Section 2A(2) provides that the 20% initial allowance is only due if the building or structure is in use by the end of 1994.

Section 2A(3): construction expenditure contracted for in year ended 31 October 1993

5. Section 2A(3) provides that the 20% initial allowance is only due in respect of construction expenditure to which, broadly, the taxpayer becomes committed during the year ended 31 October 1993.

Section 2A(4): additional VAT

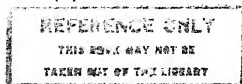
6. Section 2A(4) provides that the 20% initial allowance is also due on any "additional VAT liability".

Section 2A(5): taxpayer gets highest initial allowance available

7. Section 2A(5) provides that the 20% initial allowance is not due on expenditure which qualifies for the existing 100% initial allowance under section 1 CAA 1990 or the 75% initial allowance under section 2 CAA 1990.

Clause A(2): consequential amendment

8. Clause A(2) makes a consequential amendment to the definition of "capital expenditure" in section 4(9) CAA 1990.



Clause A(3): consequential amendment

9. Clause A(3) makes a consequential amendment to section 10(3A) CAA 1990.

Clause A(4): initial allowance for the buyer of an unused building

10. Clause A(4) inserts the new section 10C into CAA 1990. It extends the new 20% initial allowance to a buyer of an unused building or structure in two situations:

1. The first is where some or all of the actual expenditure on construction was incurred by a person who was within section 2A, or who would have been within section 2A if the construction expenditure had been on capital account.
2. The second is for certain cases where the contract for the purchase of the unused building was entered into in the year ended 31 October 1993. This was not included in the original proposals announced in November 1992.

Section 10C(1) — initial allowance based on constructor's title to initial allowance

11. Section 10C(1) contains the basic conditions for the first situation; that is, where the buyer's title to initial allowance depends on the extent to which the actual expenditure on construction could have fallen within the new section 2A. The calculation then proceeds in two stages.

Section 10C(3) and (9) & (10): stage 1 — the deemed expenditure

12. In such a case, section 10C(3) provides rules like those in section 10 for determining a "deemed" amount of expenditure on which industrial buildings allowance is calculated. The general result is that the buyer gets allowances on the lesser of the price he pays (excluding the land element) and the actual cost of construction. There is the usual exception where the person who incurred that construction expenditure was trading as a builder: here the allowance is given simply on the price paid (excluding the land element). There are also the usual provisions where there is more than one sale etc.

Section 10C(4) to (7): stage 2 — splitting the deemed expenditure

13. The rules in section 10C(4) to (7) split the "deemed" expenditure between an amount which qualifies for initial allowance and an amount which only qualifies for writing-down allowance.

Section 10C(8): splitting rules only determine rate of allowance

14. Section 10C(8) provides that the purpose of the rules in section 10C(4) to (7) is simply to determine what rate of allowance is due on each part of the deemed expenditure.

Section 10C(11): enterprise zone inter-action

15. Section 10C(11) deals with the possibility that a buyer of a building or structure might be entitled to the 100% enterprise zone initial allowance on part of the expenditure and to the new 20% initial allowance on another part.

Section 10C(2) — initial allowance based on date of purchase contract

16. Section 10C(2) gives the buyer of an unused building title to the 20% initial allowance where all the following conditions are met:

- the building is bought in pursuance of a contract entered into in the year ended 31 October 1993;
- the seller carries on a trade of constructing buildings for sale; and
- the seller owned the building (held the 'relevant interest') before 1 November 1992.

Clause A(5): enterprise zone consequential amendment

17. Clause A(5) makes a consequential amendment to the enterprise zone rule in section 17A CAA 1990.

Clause A(6): hotels located abroad

18. Clause A(6) makes it clear that the rule in section 18(13) CAA 1990 applies to qualifying hotels which may benefit from the new initial allowance. Section 18(13) provides that allowances are not due where the building or structure is outside the UK unless the asset is used for the purposes of a trade within the charge to UK tax.

Clause A(7): commencement

19. Clause A(7) provides that the clause applies to chargeable periods, or the basis periods for chargeable periods, which end after 31 October 1992.

40% first-year allowance for machinery and plant

Clause B: applies an amended version of section 22

20. Clause B operates by adapting the existing first-year allowance provision in section 22 CAA 1990 to cases where the new 40% first-year allowance is due.

Clause B(1): amendment to section 22 CAA 1990

21. Clause B(1) amends section 22(1) to provide a 40% first-year allowance in cases within the new section 22(3B) — see below.

Clause B(2): new section 22(3B)

22. Clause B(2) introduces a new section 22(3B). This provides that the new 40% first-year allowance applies to expenditure which is “incurred” in the year ended 31 October 1993. For this purpose, “incurred” has the normal meaning set out in section 159 CAA 1990 except that the rule which deems pre-trading expenditure to be incurred on the day that trading starts is disappplied.

23. The 40% first-year allowance also applies to any “additional VAT” which is incurred in respect of expenditure which qualifies for the 40% first-year allowance: new section 22(3B)(b).

Clause B(3): application of section 22(4): cases denied first-year allowance

24. Section 22(4) at present denies first-year allowance in three groups of cases. The rules in section 22(4)(a) and (b) apply to the new first-year allowance but those in section 22(4)(c) do not.

25. Section 22(4)(c) at present denies first-year allowance to a lessor unless the leasing is for a qualifying purpose. Clause B(3) disapplies section 22(4)(c) and introduces a new section 22(6A) which, in essence, denies the new 40% first-year allowance to lessors who would at present be denied the normal 25% writing-down allowance by the rules for assets leased abroad in section 42(1).

Clause B(4): introduces schedule of amendments

26. Clause B(4) introduces Schedule J3582. This is mainly concerned with the consequential changes needed to adapt the leasing rules to cope with first-year allowance.

27. There are, however, two points which may be worth noting. These relate to short-life assets and to assets previously used for a purpose which did not attract capital allowances.

Paragraph 4: short-life assets

28. Paragraph 4 of the Schedule removes the bar on a short-life election where the 40% first-year allowance is available.

Paragraph 12: assets not previously attracting allowances

29. Paragraph 12 of the Schedule introduces a new section 81(1A) which enables a business to claim the new 40% first-year allowance on the market

value of assets which were previously used for a purpose which did not attract allowances or which were introduced into the business after being received as a gift.

Paragraph 13: double allowances

30. Paragraph 13 adapts the rules in section 147 CAA 1990 (which prevent allowances from being given more than once) so that they apply to first-year allowance.

20% initial allowance for agricultural buildings

31. The draft legislation for agricultural buildings allowance is broadly similar to the provisions for industrial buildings allowance.

Clause C

32. Clause C is a short provision which introduces Schedule J3584 in which the new provisions are contained. Clause C(2) contains the commencement rule which is the same as for industrial buildings allowance.

Schedule

Paragraph 1: introduction

33. Paragraph 1 introduces the amendments.

Paragraph 2: writing-down allowance consequential

34. Paragraph 2 makes some consequential changes to the writing-down allowance rules in section 124 CAA 1990.

Paragraph 3: new initial allowance section

35. Paragraph 3 introduces a new section 124A which contains the initial allowance rules. Paragraph 3 also introduces a new section 124B which deals with the inter-action with writing-down allowance.

Section 124A(1): 20% initial allowance

36. Section 124A(1) provides a 20% initial allowance where the section applies.

Section 124A(2): expenditure on construction contracted for in the year ended 31 October 1993

37. Section 124A(2) sets out the expenditure which qualifies. This is expenditure on constructing agricultural buildings etc within the main writing-down allowance provision in section 123 and to which the taxpayer becomes committed in the year ended 31 October 1993.

Section 124A(3): building etc must be used by end of 1994

38. Section 124A(3) provides that the expenditure must be incurred for the purposes of husbandry on agricultural land and the building etc must be in use for the purposes of husbandry by the end of 1994.

Section 124A(4): dual purpose expenditure

39. Section 124A(4) applies the existing writing-down allowance rules in section 124(1) for farmhouses and other assets which are partly used for the purposes of husbandry and partly for other purposes.

Section 124A(5): recovery of initial allowance

40. Section 124A(5) enables the new 20% initial allowance to be recovered in two cases:

1. the building etc is not used for the purposes of husbandry;
2. the building etc is not used for the purposes of husbandry by the end of 1994.

Section 124A(6): option to take less than full allowance

41. Section 124A(6) enables the taxpayer to take less than the full 20% initial allowance.

Section 124A(7): pay and file consequential

42. Section 124A(7) adapts subsection (6) to the new corporation tax 'pay and file' system which starts in October 1993.

Section 124B: inter-action with writing-down allowance

43. Section 124B provides that a writing-down allowance is not due on expenditure for a chargeable period for which initial allowance is available unless the building etc is in use.

Paragraph 4: transfers of relevant interest

44. Paragraph 4 adapts the provisions in section 126 CAA 1990. These deal with the sale etc of the relevant interest in the land and determine the allowances which go to seller and buyer.

Paragraph 5: buildings etc bought unused

45. Paragraph 5 makes changes to section 127 which provide a link to the new section 127A which deals with sales of unused buildings etc where initial allowance is due (see below).

Paragraph 6: initial allowance and sales of unused buildings etc

46. Paragraph 6 introduces a new section 127A which broadly parallels the new section 10C which applies to industrial buildings allowance. Section 127A provides the same two routes to initial allowance as in the industrial buildings allowance case.

Paragraphs 7 and 8: consequential changes

47. Paragraphs 7 and 8 adapt the rules for balancing adjustments.

Paragraph 9: forestry

48. Paragraph 9 makes adjustments which provide that the new 20% initial allowance is not available for capital expenditure incurred for the purposes of forestry. FA 1988 abolished relief for expenditure on forestry.

Paragraph 10: consequential changes to section 146(3)

49. Paragraph 10 amends section 146(3) so that it is clear that the new initial allowance is taken into account in applying the long-stop rule which says that the total allowances given on a building etc must not exceed the expenditure on it.

**Inland Revenue
December 1992**

DRAFT CLAUSES/SCHEDULES

Capital allowances

A.—(1) In Chapter I of Part I of the Capital Allowances Act 1990, after section 2 there shall be inserted the following section—

Initial allowances: industrial buildings and structures. [j358] 1990 c. 1.

“Initial allowances; contracts entered into between October 1992 and November 1993.

2A.—(1) In relation to expenditure to which this section applies, section 1 shall have effect with the following modifications, that is to say—

(a) so much of that section as relates to the requirement that the site in question is at a material time in an enterprise zone, namely—

(i) paragraph (b) of subsection (1) and the reference to that paragraph in subsection (1A);

(ii) paragraph (b) of subsection (1A); and

(iii) subsection (11),

shall be omitted;

(b) for the reference in subsection (1) to 100 per cent. there shall be substituted a reference to 20 per cent.; and

(c) subsection (2) shall have effect with the omission of the words ‘and to a commercial building or structure’.

(2) No initial allowance shall be made under this section in respect of any expenditure on the construction of a building or structure unless it is or is to be first used on or before 31st December 1994; and in a case where—

(a) an initial allowance is granted under this section in respect of any expenditure on the construction of a building or structure; and

(b) by the end of that day that building or structure has not come to be used,

that allowance shall be withdrawn and all such assessments and adjustments of assessments to tax shall be made as may be necessary in consequence of its being withdrawn.

(3) Subject to subsection (5) below, this section applies to any capital expenditure incurred under a contract which—

(a) is entered into either—

(i) in the period beginning with 1st November 1992 and ending with 31st October 1993; or

(ii) for the purpose of securing that obligations under a contract entered into in that period are complied with;

but

- (b) is not entered into for the purpose of securing that obligations under a contract entered into before the beginning of that period are complied with.

(4) Subject to subsection (5) below, this section also applies to any additional VAT liability incurred in respect of expenditure falling within subsection (3) above. 5

(5) This section does not apply to—

- (a) any expenditure incurred, or incurred under a contract entered into, at a time when the site of the building or structure is in an enterprise zone, 10 being a time not more than 10 years after the site was first included in the zone;

- (b) expenditure falling in relation to expenditure so incurred within section 1(1A); or

- (c) expenditure to which section 2 applies. 15

(6) Subsection (5) above shall have effect subject to sections 10C and 17A."

(2) In section 4(9) of that Act, in the definition of "capital expenditure", for "or 10B" there shall be substituted "10B or 10C".

(3) In section 10(3A) of that Act (provisions not to apply in cases 20 falling within section 10A), after "10A" there shall be inserted "or 10C".

(4) After section 10B of that Act there shall be inserted the following section—

"Purchases of buildings and structures: allowances under section 2A.

10C.—(1) This section shall apply (subject to subsection (2) below) where— 25

- (a) expenditure is incurred on the construction of a building or structure ('actual expenditure');
 (b) some or all of that expenditure is expenditure to which section 2A applies or would be such expenditure if it were capital expenditure; and 30
 (c) before the building or structure is used, the relevant interest in it is sold.

(2) In relation to any case in which the relevant interest is sold in pursuance of a contract entered into in the period beginning with 1st November 1992 and ending 35 with 31st October 1993 by a person who—

- (a) carries on a trade which consists, in whole or in part, in the construction of buildings or structures with a view to their sale; and
 (b) has been entitled to that interest since before 1st 40 November 1992,

section 2A(3) above shall have effect for the purposes of subsection (1)(b) above and subsections (6) and (11) below as if for the words from 'capital expenditure' onwards there were substituted 'capital expenditure' 45 incurred under a contract entered into either before 1st November 1993 or for the purpose of securing that

obligations under a contract entered into before that date are complied with.'

(3) Where this section applies—

(a) the actual expenditure shall be left out of account for the purposes of sections 1 to 8, but

(b) subject to subsections (9) to (11) below, the person who buys the relevant interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, expenditure on the construction of the building or structure ('deemed expenditure') equal to the actual expenditure or to the net price paid by him for that interest, whichever is the less.

(4) The deemed expenditure shall be regarded as comprising a section 2A element and a residual element.

(5) The section 2A element of the deemed expenditure shall be calculated in accordance with the formula—

$$A \quad x \quad \frac{B}{C}$$

(6) In subsection (5) above—

A is the deemed expenditure;

B is so much of the actual expenditure as is expenditure to which section 2A applies or expenditure that would be such expenditure if it were capital expenditure; and

C is the actual expenditure.

(7) The residual element of the deemed expenditure shall be so much (if any) of the deemed expenditure as does not comprise the section 2A element.

(8) Notwithstanding the provisions of subsection (3)(b) above—

(a) the section 2A element of the deemed expenditure shall be treated for the purpose only of determining entitlement to allowances as expenditure to which that section applies; and

(b) the residual element of the deemed expenditure shall be treated for that purpose as expenditure which is not expenditure to which that section applies.

(9) Where the relevant interest in the building or structure is sold more than once before the building or structure is used, subsections (2) and (3)(b) above shall have effect only in relation to the last of those sales.



(10) Where the actual expenditure was incurred by a person carrying on a trade which consists, in whole or in part, in the construction of buildings or structures with a view to their sale and, before the building or structure is used, he sells the relevant interest in it in the course of that trade or, as the case may be, of that part of that trade, then— 5

- (a) if that sale is the only sale of the relevant interest before the building or structure is used, paragraph (b) of subsection (3) above shall have effect as if the words 'the actual expenditure or to' and 'whichever is the less' were omitted; and 10
- (b) in any other case, that paragraph shall have effect as if the reference to the actual expenditure were a reference to the price paid on that sale. 15

(11) Where some of the actual expenditure is expenditure falling within subsection (1)(b) of section 10A and some or all of the remainder is expenditure to which section 2A applies or to which section 2A would apply if it were capital expenditure, section 10A and this section shall both have effect but as if— 20

- (a) subsections (3), (9) and (10) of this section were omitted;
- (b) references in this section to the deemed expenditure were references to the expenditure which, in accordance with subsections (2), (8) and (9) of section 10A is the deemed expenditure for the purposes of that section; and 25
- (c) the section 2A element of the deemed expenditure were comprised in the non-enterprise zone element of that expenditure." 30

(5) In section 17A of that Act (exclusion of expenditure incurred more than 20 years after a site is included in an enterprise zone), after "section 1(1)(b)" there shall be inserted "2A(5)(a)".

(6) In section 18(14) of that Act (application of section 18(13) to 35 certain buildings), for "qualifying hotels to which this Part applies by virtue of section 7" there shall be substituted "any qualifying hotel".

(7) This section shall have effect in relation to every chargeable period which, or the basis period for which, ends after 3rd October 1992.

DRAFT CLAUSES/SCHEDULES

B.—(1) In subsection (1) of section 22 of the Capital Allowances Act 1990 (first-year allowances), in the words after paragraph (b), after “which” there shall be inserted “, in the case of expenditure to which this section applies by virtue only of subsection (3B) below, shall be of an amount equal to 40 per cent. of that expenditure and, in any other case,”.

First year allowances: machinery and plant. [j3581]

1990 c. 1.

(2) After subsection (3A) of that section there shall be inserted the following subsection—

“(3B) This section applies to—

- (a) any expenditure which, disregarding any effect of section 83(2) on the time at which it is to be treated as incurred, is incurred by any person in the period beginning with 1st November 1992 and ending with 31st October 1993; and
- (b) any additional VAT liability incurred in respect of expenditure to which this section applies by virtue of paragraph (a) above.”

(3) In subsection (4)(c) of that section (no first-year allowance on the provision of machinery or plant for leasing), after “(6)” there shall be inserted “(6A)”; and after subsection (6) of that section there shall be inserted the following subsection—

“(6A) Paragraph (c) of subsection (4) above does not apply to expenditure to which this section applies by virtue only of subsection (3B) above; but (subject to section 43) no first-year allowance shall be made by virtue of subsection (3B) above in respect of any expenditure on the provision of machinery or plant for leasing to a non-resident unless it appears that the leasing is—

- (a) short-term leasing; or
- (b) the leasing of a ship, aircraft or transport container which—
 - (i) will be used in the requisite period for a purpose which is a qualifying purpose by virtue of section 39(6) to (9); and
 - (ii) will not at any time in that period be used for any other purpose;

and section 50 shall apply for the interpretation of this subsection as it applies for the interpretation of Chapter V of this Part.”

(4) Schedule {j3582} to this Act (which makes further amendments of that Act of 1990 in connection with the first-year allowances for which provision is made by this section) shall have effect.

(5) This section and the amendments made by Schedule {j3582} to this Act shall have effect in relation to every chargeable period which, or the basis period for which, ends after 31st October 1992.

DRAFT CLAUSES/SCHEDULES

C.—(1) Schedule {j3584} to this Act (which makes provision, which broadly corresponds to that made in relation to industrial buildings and structures by section {j358}, for the making of initial allowances in respect of expenditure on the construction of agricultural buildings, fences and other works) shall have effect.

Initial
allowances:
agricultural
buildings etc.
{j3583}

(2) This section and the amendments made by Schedule {j3584} to this Act shall have effect in relation to every chargeable period which, or the basis period for which, ends after 31st October 1992.

DRAFT CLAUSES/SCHEDULES

SCHEDULE {J3582}

Section {j3581}.

FIRST-YEAR ALLOWANCES FOR MACHINERY AND PLANT {J3582}

1. The Capital Allowances Act 1990 shall be amended as follows.

1990 c. 1.

2. In section 23(6) (interpretation of information provisions relating to first-year allowances), at the end there shall be inserted "and references in this section to a first-year allowance shall not include references to a first-year allowance in respect of expenditure to which section 22 applies by virtue only of subsection (3B) of that section."

3. In section 30(2)(c) (special provision for ships), for "section" there shall be substituted "sections 46(8)(e) and".

4. In section 38(m) (assets attracting first-year allowances not to be treated as short-life assets), after "section 22" there shall be inserted "(2), (3) or (3A)".

5.—(1) In subsection (2)(a) of section 39 (definition of a qualifying purpose), for "subsections (2) and (3)" there shall be substituted "subsections (2) to (3B)".

(2) In subsection (8)(b) of that section (anti-avoidance provision in respect of chartering), after "new expenditure," there shall be inserted "a first-year allowance by virtue of section 22(3B) or".

6. After subsection (8) of section 42 (modifications in relation to "old expenditure" of provisions relating to overseas leasing) there shall be inserted the following subsection—

"(9) For the purposes of the application of this section to any expenditure to which section 22 applies by virtue only of subsection (3B) of that section, this section shall have effect—

- (a) as if subsection (4) above included a reference to a first-year allowance made in respect of that expenditure; and
- (b) for the purposes of paragraph (a) above, as if the reference in that subsection to an event occurring such that there is no right to that allowance included a reference to an event occurring such that, if subsection (3) included a reference to first-year allowances, there would be no such right."

7.—(1) In subsection (1) of section 43 (cases where section applies), for "This section" there shall be substituted "Subsections (2) and (3) below".

(2) After subsection (3) of that section there shall be inserted the following subsection—

"(4) Section 22(6A) shall not prevent a first-year allowance being made in respect of expenditure incurred by any person on the provision of machinery or plant for leasing where it appears that—

- (a) the machinery or plant will be leased as mentioned in subsection (1) above; and

SCH. {J3582}

(b) the circumstances are such that subsection (2) above will require the whole or any part of the expenditure to be treated as not falling within section 42(1);

and any first-year allowance made by virtue of this subsection in respect of that expenditure shall be made on the same assumptions and subject to the same apportionments (if any) as it appears would, by virtue of subsection (3) above, be applicable in the case of a writing-down allowance." 5

8. In section 44 (further provisions in relation to joint lessees in cases involving new expenditure), after subsection (4) there shall be inserted the following subsection— 10

“(5) For the purposes of the application of this section to any expenditure to which section 22 applies by virtue of subsection (3B) of that section, this section shall have effect as if—

(a) references to section 43(2) included references to section 15 43(4);

(b) references to a normal writing-down allowance included references to a first-year allowance; and

(c) the reference in subsection (2) above to the separate item of machinery or plant referred to in section 43(3)(a) were, in 20 relation to a first-year allowance, a reference to the machinery or plant in respect of which, in accordance with section 43(4), that allowance is or is treated as made.”

9. In section 46 (recovery of allowances made in respect of plant and machinery subsequently let to a foreign resident), after subsection (7) 25 there shall be inserted the following subsection—

“(8) For the purposes of the application of this section to any expenditure to which section 22 applies by virtue of subsection (3B) of that section, this section shall have effect as if—

(a) in subsection (1) above, after ‘qualified for a’ there were 30 inserted ‘first-year allowance or any’;

(b) in subsection (2) above—

(i) in paragraph (a), at the beginning there were inserted ‘the aggregate of any first-year allowance and’; 35 and

(ii) in paragraph (b), after the word ‘no’ there were inserted ‘first-year allowance or’;

(c) in subsection (5) above—

(i) after ‘and a’ there were inserted ‘first-year allowance or’; and 40

(ii) in paragraph (a), for the words from ‘it referred’ to the end of the paragraph there were substituted ‘that allowance were such a first-year allowance or, as the case may be, normal writing-down allowance as is referred to in paragraph (a) of that subsection and the 45 references to the expenditure in respect of which an allowance is made were construed accordingly.’

(d) in subsection (6) above—

SCH. {J3582}

(i) in paragraph (a), after 'for a' there were inserted 'first-year allowance or'; and

5 (ii) in the words after paragraph (b), for 'a normal writing down allowance has been made' there were substituted 'the allowance that has been made is a first-year allowance or normal writing-down allowance';

and

(e) in subsection (7) above—

10 (i) in paragraph (a), after 'section' there were inserted '30(2)(c) or'; and

(ii) for 'section 31' there were substituted 'section 30 or 31'."

10. In section 48 (information provisions in relation to joint lessees in cases involving new expenditure), after subsection (6) there shall be inserted the following subsection—

20 "(7) For the purposes of the application of this section to any expenditure to which section 22 applies by virtue of subsection (3B) of that section, this section shall have effect as if the references in subsections (1) and (2) above to a normal writing-down allowance included references to a first-year allowance; but nothing in this subsection shall prevent subsection (1) above from continuing to apply where the use for permitted leasing is after the expenditure has qualified for one allowance and before it qualifies for another."

25 11.—(1) In subsection (3) of section 50, in paragraph (i) of the definition of "old expenditure" (old expenditure to include expenditure falling within section 22) after "22" there shall be inserted "other than expenditure to which that section applies by virtue only of subsection (3B) of that section".

30 (2) After subsection (4) of that section there shall be inserted the following subsection—

35 "(4A) In the case of expenditure to which section 22 applies by virtue only of subsection (3B) of that section, any reference in this Chapter to the expenditure having qualified for a first-year allowance is a reference to such an allowance having fallen to be made in respect of the whole or any part of that expenditure."

12. In section 81 (assets used for purposes not attracting capital allowances and assets received by way of gift), after subsection (1) there shall be inserted the following subsection—

40 "(1A) Subject to section 63, in a case falling within subsection (1)(a) or (b) above, the assumptions applied by that subsection in relation to sections 24 to 26—

45 (a) shall apply in relation to section 22 as they apply in relation to those sections but only for the purposes of first-year allowances by virtue of section 22(3B); and

(b) where those assumptions require any person to be treated as having incurred expenditure in a chargeable period related to any event, shall apply for those purposes as if they

SCH. (J3582)

required that person to be treated as having incurred that expenditure on the date of that event."

13.—(1) In subsection (1)(a) of section 147 (exclusion of double allowances) after "those Parts" there shall be inserted "or section 22".

(2) In subsection (2) of that section, after "any person" there shall be inserted "an allowance is made under section 22 in respect of any capital expenditure or". 5

DRAFT CLAUSES/SCHEDULES

SCHEDULE {J3584}

Section {j3583}.

INITIAL ALLOWANCES FOR AGRICULTURAL BUILDINGS {J3584}

1. The Capital Allowances Act 1990 shall be amended as follows.

1990 c. 1.

2.—(1) In subsection (1) of section 124 (expenditure qualifying for allowances)—

(a) for “this Part, including” there shall be substituted “writing-down allowances or”; and

(b) in paragraph (b), for “this Part” there shall be substituted “writing-down allowances or, as the case may be, section 122”.

10 (2) In subsection (2) of that section, for “this Part” there shall be substituted “writing-down allowances”.

3. After section 124 there shall be inserted the following sections—

“Initial allowances: 124A.—(1) Subject to the following provisions of this
 15 contracts entered Part, if a person having a major interest in any agricultural
 into between land incurs any expenditure to which this section applies,
 October 1992 there shall be made to him, for the chargeable period
 and November which is that related to the incurring of the expenditure,
 1993. an allowance (‘an initial allowance’) equal to 20 per cent.
 of the amount of that expenditure.

20 (2) This section applies to any expenditure falling within section 123 which is incurred under a contract which—

(a) is entered into either—

25 (i) in the period beginning with 1st November 1992 and ending with 31st October 1993; or

(ii) for the purpose of securing that obligations under a contract entered into in that period are complied with;

30 but

(b) is not entered into for the purpose of securing that obligations under a contract entered into before the beginning of that period are complied with.

35 (3) No expenditure on the construction of any building, fence or other works shall be taken into account for the purposes of any initial allowance under this Part unless it is incurred for the purposes of husbandry on the agricultural land in question; and no initial allowance shall be made under this Part in respect of expenditure on
 40 the construction of any building, fence or other works unless the building, fence or other works is or is to be first used for the purposes of husbandry on or before 31st December 1994.

SCH. [J3584]

(4) Where expenditure is incurred on a farmhouse or any asset (other than a farmhouse) which is to serve partly the purposes of husbandry and partly other purposes, the same apportionment of that expenditure shall be made for the purposes of any initial allowance under this Part as is required by section 124(1)(a) or (b) to be made for the purposes of writing-down allowances. 5

(5) In a case where—

(a) any expenditure to which this section applies is incurred on the construction of any building, fence or other works; and 10

(b) either—

(i) when the building, fence or other works comes to be used it is not used for the purposes of husbandry; or 15

(ii) it has not come to be so used by the end of 31st December 1994,

the expenditure shall be left out of account for the purposes of initial allowances under this Part and, accordingly, any initial allowance made in respect of the expenditure under this section shall be withdrawn and all such assessments and adjustments of assessments shall be made as may be necessary to give effect to that withdrawal. 20

(6) Subject to subsection (7) below, a person making a claim by virtue of this section as it applies for income tax purposes may require the initial allowance to be reduced to a specified amount; and a company may by notice given to the inspector not later than two years after the end of the chargeable period for which the allowance falls to be made disclaim the initial allowance or require it to be reduced to a specified amount. 30

(7) Subsection (6) above shall have effect as respects allowances falling to be made for accounting periods ending after the day appointed for the purposes of section 10 of the principal Act (pay and file) with the omission of the words 'as it applies for income tax purposes' and the words from 'and a company' onwards. 35

Restriction on
writing-down
allowance where
initial allowance
made.

124B. Where an initial allowance under this Part is made for any chargeable period in respect of any expenditure on the construction of a building, fence or other works, a writing-down allowance in respect of that expenditure shall be made under this Part for the same chargeable period only if the building, fence or other works has come to be used for the purposes of husbandry before the end of that period." 45

4.—(1) In subsection (1) of section 126 (transfers of relevant interest), for "a writing-down allowance" there shall be substituted "an allowance under this Part".

(2) For subsection (2) of that section there shall be substituted the following subsection— SCH. {J3584}

“(2) If, in a case falling within subsection (1) above, the date of the acquisition occurs during a chargeable period of the former owner or its basis period, the former owner shall be entitled—

5 (a) to the whole of any initial allowance for the chargeable period related to the acquisition; but

(b) only to an appropriate proportion of any writing-down allowance for the chargeable period so related;

10 and, similarly, if the date of the acquisition occurs during a chargeable period of the new owner or its basis period, the new owner shall be entitled only to an appropriate proportion of any writing-down allowance for the chargeable period (of his) related to the acquisition.”

15 (3) In subsection (6) of that section (balancing increase of last writing-down allowance in respect of allowance lost on transfers), after “total allowances” there shall be inserted “(including any initial allowance)”.

5.—(1) After subsection (3) of section 127 (buildings etc. bought unused) there shall be inserted the following subsections—

20 “(3A) The expenditure referred to in subsection (1) above includes neither—

(a) expenditure which falls to be disregarded for the purposes of writing-down allowances by virtue of section 124(1); nor

25 (b) expenditure some or all of which is expenditure to which section 124A applies.

(3B) Accordingly, any expenditure which is treated as incurred under subsection (2)(c) above shall be treated (without prejudice to section 124(2)) as incurred for the purposes mentioned in section 124(1).”

30 (2) In subsection (4) of that section, for “and (3)” there shall be substituted “(3) and (3B)”.

6. After section 127 there shall be inserted the following section—

“Purchases of buildings and structures: cases involving initial allowances. 127A.—(1) This section shall apply (subject to subsection (2) below) where—

35 (a) there is expenditure on the construction of any building, fence or other works (‘the actual expenditure’) which—

(i) is expenditure falling within section 123; and

40 (ii) is not expenditure which would fall to be disregarded for the purposes of writing-down allowances by virtue of section 124(1);

45 (b) some or all of the actual expenditure is expenditure to which section 124A applies or would be such expenditure if it were capital expenditure; and

SCH. (J3584)

- (c) before the building, fence or other works comes to be used, the relevant interest is sold.

(2) In relation to any case in which the relevant interest is sold in pursuance of a contract entered into in the period beginning with 1st November 1992 and ending with 31st October 1993 by a person who—

- (a) carries on a trade which consists, in whole or in part, in the construction of buildings or structures with a view to their sale; and
- (b) has been entitled to that interest since before 1st November 1992,

section 124A(2) above shall have effect for the purposes of subsection (1)(b) above and subsection (6) below as if for the words from 'contract which' there were substituted 'contract entered into either before 1st November 1993 or for the purpose of securing that obligations under a contract entered into before that date are complied with.'

(3) Where this section applies—

- (a) the actual expenditure shall be left out of account for the purposes of this Part and, accordingly—
 - (i) any initial allowance or writing-down allowance made in respect of the actual expenditure shall be withdrawn; and
 - (ii) all such assessments and adjustments of assessments shall be made as may be necessary to give effect to that withdrawal;
- (b) section 126 shall not apply;
- (c) the person who buys the relevant interest shall be treated for the purposes of this Part as having incurred, on the date when the purchase price becomes payable, expenditure falling within section 123 on the construction of the building, fence or other works ('the deemed expenditure'); and
- (d) the deemed expenditure shall be treated (without prejudice to section 124(2) and 124A(5)) as incurred for the purposes of husbandry on the agricultural land in question.

(4) The deemed expenditure—

- (a) shall be whichever is the lesser of the net price paid by the person concerned for the purchase of the relevant interest and the actual expenditure; and
- (b) shall be regarded as comprising a section 124A element and a residual element.

(5) The section 124A element of the deemed expenditure shall be calculated in accordance with the formula—

$$\begin{array}{ccc} & & B \\ A & \times & \frac{\quad}{C} \end{array}$$

(6) In subsection (5) above—

A is the deemed expenditure;

B is so much of the actual expenditure as is expenditure to which section 124A applies or expenditure that would be such expenditure if it were capital expenditure; and

C is the actual expenditure.

(7) The residual element of the deemed expenditure shall be so much (if any) of the deemed expenditure as does not comprise the section 124A element.

(8) Notwithstanding the provisions of subsection (3)(c) above—

(a) the section 124A element of the deemed expenditure shall be treated for the purpose only of determining entitlement to allowances as expenditure to which that section applies; and

(b) the residual element of the deemed expenditure shall be treated for that purpose as expenditure which is not expenditure to which that section applies.

(9) Where the relevant interest is sold more than once before the building, fence or other works is used, subsections (2) and (3)(c) and (d) above shall have effect only in relation to the last of those sales."

7.—(1) In subsection (1) of section 128 (balancing allowances and charges), for "a writing-down allowance" there shall be substituted "an allowance under this Part".

(2) In subsection (2) of that section, for "this Part less the aggregate of any writing-down allowances" there shall be substituted "any allowances under this Part less the aggregate of any such allowances".

(3) In subsection (3) of that section, after "purposes of" there shall be inserted "allowances under".

(4) In subsection (6) of that section, for "writing-down allowances" there shall be substituted "allowances under this Part".

8. In section 129(1) (balancing events), for "a writing-down allowance" there shall be substituted "an allowance under this Part".

9. In section 131(2) (application of Chapter I of Part V to forestry buildings etc), in the words after paragraph (b), before "subject" there shall be inserted "with the omission of sections 124A, 127(3A)(b) and 127A and".

10. In section 146(3) (allowances under Parts V and VI not to exceed expenditure), after "made under" there shall be inserted "Part V or".